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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------|-------------|----------------------|-------------------------|------------------|
| 09/583,166 | 05/30/2000 | Takeo Orui | 040373/0284 | 1217 |
| 22428 | 7590 | 07/13/2004 | EXAMINER | |
| FOLEY AND LARDNER | | | HOM, SHICK C | |
| SUITE 500 | | | ART UNIT | PAPER NUMBER |
| 3000 K STREET NW | | | 2666 | |
| WASHINGTON, DC 20007 | | | DATE MAILED: 07/13/2004 | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------|------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/583,166 | ORUI, TAKEO | |
| | Examiner Shick C Hom | Art Unit 2666 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 November 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-28 is/are pending in the application.
 4a) Of the above claim(s) 20-28 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,2,5,8,11,14 and 17 is/are rejected.
 7) Claim(s) 3-4, 6-7, 9-10, 12-13, 15-16, 18-19 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Pickering et al. (6,628,666).

Regarding claim 1:

Pickering et al. disclose the Internet protocol network alternate routing system comprising an extension telephone, a plurality of networks including one Internet protocol network for transmitting voice signals from said extension telephone, and an exchange for controlling a connection between said extension telephone and said plurality of networks; wherein said exchange, upon detecting a state of congestion over a first link of said Internet protocol network, automatically switches the Internet protocol network that is connected with said extension telephone to a second network, said second network being other than said Internet protocol network (see col. 3 lines 35-49 which recite establishing a conventional telephone call using the telephony channel if the bandwidth in the Internet Protocol network telephony calls is below a threshold value); and an announcement trunk for reporting switching of said signal path to said extension telephone when the Internet protocol network determined by said alternate routing control unit is in a congested state (see col. 6 lines 50-60 which recite software SW prompting the client if the quality of service cannot be met

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clearly anticipate the announcement trunk for reporting congestion).

Regarding claim 2:

Pickering et al. disclose the plurality of signal paths for connecting said plurality of networks with said extension telephone; an alternate routing control unit for determining which one network among said plurality of networks to be connected as said second network with said extension telephone (see col. 1 line 66 to col. 2 line 15 which recite the router); a call control unit for establishing a second link between the second network that has been determined by said alternate routing control unit and said extension telephone (see col. 6 lines 50-60 which recite means for establishing the call); a traffic control unit for detecting a congested state of said Internet protocol network for which said first link has been established by said call control unit (see col. 2 line 48 to col. 3 line 8 which recite means for handling congestion and traffic and Fig. 2); and a switch control unit for controlling said connection between said extension telephone and a signal path among said plurality of signal paths that is connected to the second network, based on detection results in said traffic control unit (see Fig. 2 which shows the detection of congestion and switching or changing to an alternative network).

Regarding claim 11:

Pickering et al. disclose wherein said switch control unit can be manually switched (see col. 6 lines 50-60 which recite the customer being able to switch, i.e. manually switching, to another media type).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 8, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickering et al. (6,628,666) as applied to claims 1, 2, and 11 above, and further in view of Shimoyama et al. (6,643,496).

Regarding claim 5:

Pickering et al. disclose the Internet protocol network alternate routing system according to claim 2 wherein: said traffic control unit detects a packet loss value that is contained in a sender report packet that is transmitted from

said Internet protocol network and notifies said call control unit that said packet loss value has exceeded a predetermined set value if said packet loss rate exceeds the predetermined set value, and does not establish a link between said Internet protocol network and said extension telephone if the count value exceeds the predetermined set value (see col. 3 lines 35-54 and Fig. 2).

Regarding claim 8:

Pickering et al. disclose wherein the packet loss rate in said sender report packet is variable (see col. 43-49 which recite choppy or unintelligible voice and delayed or unavailable video because of lost packets due to not having sufficient bandwidth clearly anticipate packet loss rate being variable).

Regarding claims 11, 14, and 17:

Pickering et al. disclose wherein said switch control unit can be manually switched (see col. 6 lines 50-60 which recite the customer being able to switch, i.e. manually switching, to another media type).

For claims 5, 8, 11, 14, and 17 Pickering et al. disclose all the subject matter of the claimed invention with the exception of the packet loss value being a packet loss rate and the use of a counter which is incremented with each notification

that the packet loss rate has exceeded a predetermined value as in claim 5.

Shimoyama et al. from the same or similar fields of endeavor teach that it is known to provide the packet loss value being a packet loss rate and the use of a counter which is incremented with each notification that the packet loss rate has exceeded a predetermined value (see col. 4 lines 9-15 which recite the use of packet loss rate and col. 5 lines 14-28 which reciting the use of a counter which is incremented). Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide the packet loss value being a packet loss rate and the use of a counter which is incremented with each notification that the packet loss rate has exceeded a predetermined value as taught by Shimoyama et al. in the communications system of Pickering et al. The packet loss value being a packet loss rate and the use of a counter which is incremented with each notification that the packet loss rate has exceeded a predetermined value can be implemented by connecting a counter to the means for detecting congestion, providing the packet loss value being a packet loss rate and incrementing the counter with each notification that the packet loss rate has exceeded a predetermined value of Shimooymama et al. into the means for detecting congestion as

shown in Fig. 3 of Pickering et al. The motivation for providing the packet loss value being a packet loss rate and the use of a counter which is incremented with each notification that the packet loss rate has exceeded a predetermined value as taught by Shimoyama et al. in the communication system of Pickering et al. being that it provides more efficiency for control of congestion in a manner that packet loss will not occur at the receiving end.

Allowable Subject Matter

7. Claims 3-4, 6-7, 9-10, 12-13, 15-16, and 18-19 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
Sautter et al. disclose user data protocol for Internet data communications.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is

reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9306, (for formal communications;
please mark "EXPEDITED PROCEDURE")

Or:

(for informal or draft communications, please
label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal
Park II, 2121 Crystal Drive, Arlington, VA., Sixth
Floor (Receptionist).

Any inquiry concerning this communication or earlier
communications from the examiner should be directed to Shick Hom
whose telephone number is (703) 305-4742. The examiner's
regular work schedule is Monday to Friday from 8:00 am to 5:30
pm EST and out of office on alternate Friday.

If attempts to reach the examiner by telephone are
unsuccessful, the examiner's supervisor, Seema Rao, can be
reached at (703) 308-5463.

Any inquiry of a general nature or relating to the status
of this application or proceeding should be directed to the
Technology Center 2600 Customer Service Office whose telephone
number is (703) 306-0377.

SH

July 1, 2004


DIRECTOR
TECHNOLOGY CENTER